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No. 97-1054

In The

# Supreme Court of the United States

October Term, 1997

THE CHASE MANHATTAN BANK,
as Trustee of the IBM Retirement Plan Trust Fund,

*Petitioner,*

v.

CITY AND COUNTY OF SAN FRANCISCO *et al.*,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

STATEMENT OF THE CASE ..... 2

SUMMARY OF ARGUMENT AGAINST GRANTING THE WRIT ..... 4

ARGUMENT AGAINST GRANTING THE WRIT ... 5

I. THE NINTH CIRCUIT CORRECTLY HELD THAT CHASE HAS A PLAIN, SPEEDY, AND EFFICIENT REMEDY UNDER STATE LAW BECAUSE CHASE CAN RAISE THE ERISA PREEMPTION ISSUE IN THE CALIFORNIA COURTS ..... 5

A. The Ninth Circuit Correctly Observed that Congress Did Not Intend ERISA to Override the Historic Concern for State Fiscal Autonomy that Underlies the Tax Injunction Act ..... 5

B. A Decision Contrary to the Ninth Circuit's Would Violate the Principles of Comity .... 7

II. THE NINTH CIRCUIT CORRECTLY HELD THAT THE TAX INJUNCTION ACT BARRED FEDERAL JURISDICTION BECAUSE ONE MARKET PLAZA COULD RAISE THE ERISA PREEMPTION ISSUE IN THE CALIFORNIA COURT SYSTEM ..... 8

CONCLUSION ..... 10

## TABLE OF AUTHORITIES

Page

CASES

*Arkansas v. Farm Credit Servs.*, ___ U.S. ___, 117 S.Ct. 1776 (1997).....6, 7

*Ashton v. Cory*, 780 F.2d 816 (9th Cir. 1986).....6

*Brunton v. Superior Court*, 20 Cal.2d 202 (1942).....3

*Dennis v. County of Santa Clara*, 215 Cal.App.3d 1019, *review denied* (1989).....3

*Fielder v. City of Los Angeles*, 14 Cal.4th 137, *review denied* (1993).....3

*Franchise Tax Board of the State of California v. Alcan Aluminium Ltd.*, 493 U.S. 331 (1990).....5, 8

*Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1983).....9

*Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988).....10

*Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134 (1984).....9

*Pacific Southwest Realty v. County of Los Angeles*, 1 Cal.4th 155 *reh'g denied* (1991).....3

*Parkmerced Co. v. City and County of San Francisco*, 149 Cal.App.3d 1091 (1983).....3

STATUTES

28 U.S.C. § 1341.....1

29 U.S.C. §§ 1001 *et seq.* (ERISA).....1

29 U.S.C. § 1106.....2

29 U.S.C. § 1108.....2

TABLE OF AUTHORITIES – Continued

Page

29 U.S.C. § 1132(e)(1) (ERISA § 502(e)(1)) .....4, 6, 8, 9

29 U.S.C. § 1144(a) (ERISA § 514(a)) ..... 1

California Constitution Article XIIIA, § 1..... 3

California Constitution Article XIIIA, § 2..... 3

California Revenue and Taxation Code § 60..... 3

California Revenue and Taxation Code § 64(c)..... 3

California Revenue and Taxation Code §§ 480-480.2..... 3

RULES

Federal Rule of Civil Procedure 12(b)(1)..... 4

## INTRODUCTION

Respondent City and County of San Francisco ("San Francisco") files this brief in opposition to the Petition for Writ of Certiorari filed by Petitioner, Chase Manhattan Bank ("Chase").

This case involves the relationship between the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.*, and the Tax Injunction Act, 28 U.S.C. § 1341. Chase filed this suit in the United States District Court for the Northern District of California to challenge San Francisco's reassessment of real property owned by a joint venture known as One Market Plaza Joint Venture ("One Market Plaza"). Chase sought a declaratory judgment that ERISA section 514(a) (29 U.S.C. § 1144(a)) preempted the statute under which the San Francisco Assessor reassessed the real property beneficially owned by One Market Plaza. The district court held the Tax Injunction Act barred federal district court jurisdiction over the case. The Ninth Circuit affirmed.

Review by this Court is unnecessary. The Ninth Circuit correctly held that Chase had a plain, speedy, and efficient remedy to raise the ERISA preemption claim in the California courts. Consequently, the Tax Injunction Act barred federal jurisdiction. The Ninth Circuit also correctly held that One Market Plaza could raise the ERISA preemption claim in the California courts because Chase controlled One Market Plaza.

The writ petition should be denied.

## STATEMENT OF THE CASE

For some time prior to 1986, the Equitable Life Assurance Society of America ("Equitable") owned in its general account a 90 percent interest in One Market Plaza. E.R. 127.[1] One Market Plaza owned an office complex in San Francisco. *Id.*

In 1986, Equitable agreed to a transfer of 81 percent of the interest in One Market Plaza to a "separate account" maintained by Equitable for the IBM Retirement Plan Trust Fund ("IBM"). E.R. 184-185. Chase is the trustee of IBM. Petition at App. 5. In consideration for the transfer, IBM paid the fair market value of the interest transferred and some peripheral insurance. E.R. 185. IBM, as the holder of the separate account, bore the risk of appreciation or depreciation of the account assets. E.R. 186.

Because Equitable sold the asset and would also act as a fiduciary for the buyer, ERISA's prohibited transaction provisions required the Department of Labor to examine the transaction and to determine that transfer of the asset to the separate account was on terms *at least* as favorable to IBM as those that would occur in an arm's length transaction. E.R. 128-129, 29 U.S.C. §§ 1106, 1108. The Department of Labor made such a determination. E.R. 129-130.

Under California law, when a "change in ownership" in real property occurs, that fact must be reported to governmental authorities so they can establish new tax

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[1] "E.R." refers to the Excerpts of Record filed in the Ninth Circuit.

limitations under California's Proposition 13. *See, e.g.*, Cal. Rev. & Tax. Code §§ 480-480.2; Cal. Const., art. XIIIA, §§ 1, 2. Also under California law, the transfer of One Market Plaza to the separate account resulted in a "change of ownership" in the real property owned by One Market Plaza because there was a change in the beneficial ownership of One Market Plaza. *See, e.g., Pacific Southwest Realty v. County of Los Angeles*, 1 Cal.4th 155, *reh'g denied* (1991); *Parkmerced Co. v. City and County of San Francisco*, 149 Cal.App.3d 1091 (1983); Cal. Rev. & Tax. Code §§ 60, 64(c). IBM, however, failed to report the transaction as a change in ownership. E.R. 187. As a result, the San Francisco Assessor was unaware of the need to increase the limit on property taxes for One Market Plaza's real property. *Id.* In 1992, when the Assessor learned through other means of the transaction, she established new, increased property tax assessments.[2]

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[2] Chase misstates two aspects of the new tax assessments. First, Chase wrongly states that the tax was on the transaction approved by the Department of Labor. Petition at i (first question presented). The California real property tax is an *in rem* tax on property, and it occurs annually, without regard to any transaction and without any personal liability. California courts have long and consistently distinguished real property taxes from transaction taxes. *See, e.g., Brunton v. Superior Court*, 20 Cal.2d 202, 207 (1942); *Fielder v. City of Los Angeles*, 14 Cal.4th 137, 145, *review denied* (1993).

Second, Chase wrongly implies that the purchase price approved by the Department of Labor should have been the taxable value of the reassessed property. Petition at 3. For property encumbered by leases, however, the taxable value of the property is not the purchase price. *See Dennis v. County of Santa Clara*, 215 Cal.App.3d 1019, *review denied* (1989); E.R. 185.

E.R. 187-188. In addition, based on information she discovered, the Assessor added penalty assessments for fraud. E.R. 193.

Chase, as trustee for IBM, filed an action in the United States District Court for the Northern District of California seeking a declaration that ERISA preempted application of the change in ownership provisions of the California property tax to the sale from Equitable to IBM. Petition at App. 5. San Francisco filed a motion to dismiss under Federal Rule 12(b)(1). The district court granted that motion on the ground that the Tax Injunction Act deprived the court of jurisdiction. *Id.*

The Ninth Circuit Court of Appeals affirmed. Petition at App. 1-10. The Ninth Circuit reasoned that the Tax Injunction Act deprived the district court of jurisdiction because Chase had a plain, speedy and efficient remedy to challenge the change in ownership determination in the California courts, both directly and through One Market Plaza. *Id.*

## SUMMARY OF ARGUMENT AGAINST GRANTING THE WRIT

The Ninth Circuit correctly ruled that Chase has a plain, speedy, and efficient remedy under state law because ERISA was not intended to be an exception to the Tax Injunction Act. A contrary decision would violate the principles of comity by resulting in federal court intervention in matters of exclusive local concern.

The Ninth Circuit also correctly ruled that nothing in ERISA section 502(e)(1) (29 U.S.C. § 1132(e)(1)) prevents One Market Plaza from raising the ERISA preemption

claim when challenging the tax in state court. As a result, under *Franchise Tax Board of the State of California v. Alcan Aluminium Ltd.*, 493 U.S. 331 (1990), Chase has a plain, speedy, and efficient remedy under state law that satisfies the Tax Injunction Act.

## ARGUMENT AGAINST GRANTING THE WRIT

### I. THE NINTH CIRCUIT CORRECTLY HELD THAT CHASE HAS A PLAIN, SPEEDY, AND EFFICIENT REMEDY UNDER STATE LAW BECAUSE CHASE CAN RAISE THE ERISA PREEMPTION ISSUE IN THE CALIFORNIA COURTS.

Chase asks this Court to answer the following question:

> Does an ERISA trustee have a plain, speedy, and efficient remedy to challenge the method of imposition of a local tax on a transaction regulated by ERISA by bringing a civil action under ERISA in state court, in view of ERISA's grant of exclusive jurisdiction of that action to the federal courts?

Review by this Court is unnecessary because the Ninth Circuit correctly answered the question.

#### A. The Ninth Circuit Correctly Observed that Congress Did Not Intend ERISA to Override the Historic Concern for State Fiscal Autonomy that Underlies the Tax Injunction Act.

The Tax Injunction Act provides:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any

> tax under State law where a plain, speedy, and efficient remedy may be had in the courts of such State.

Chase argued to the Ninth Circuit that the Tax Injunction Act does not prevent the district court from hearing this case because ERISA section 502(e)(1) provides that this action, raising the question of whether ERISA preempts the statute under which the Assessor determined that a change of ownership occurred, can only be brought in the federal district courts.[3]

The Ninth Circuit observed that in three previous published decisions, it held that ERISA was not intended to be an exception to the Tax Injunction Act. Petition at App. 6. As a result, Chase could bring its action in the California courts. *See, e.g., Ashton v. Cory*, 780 F.2d 816, 822 (9th Cir. 1986) (opinion by Judge, now Justice, Kennedy).

The Ninth Circuit acknowledged the split in the circuit courts on the question. Petition at App. 7. However, the Ninth Circuit found support for its position in this Court's recent unanimous opinion in *Arkansas v. Farm Credit Servs.*, ___ U.S. ___, 117 S.Ct. 1776 (1997). Petition at App. 8. The Ninth Circuit observed that *Arkansas* reaffirmed the Tax Injunction Act as a " 'broad jurisdictional barrier' " to the federal courts. Petition at App. 8, citing to 117 S.Ct. at 1779. The Ninth Circuit stressed that in *Arkansas*, this Court underscored the importance of the

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[3] Section 502(e)(1) provides in relevant part:

> district courts of the United States shall have exclusive jurisdiction of civil actions under [ERISA] brought by . . . a fiduciary. . . .

need for states to administer their own tax laws without federal interference and quoted the following passage from *Arkansas* to that effect:

> The federal balance is well served when the several States define and elaborate their own laws through their own courts and administrative processes and without undue interference from the federal judiciary. The States' interest in the integrity of their own processes is of particular moment respecting questions of state taxation.

Petition at App. 8, quoting from 117 S.Ct. at 1780.

### B. A Decision Contrary to the Ninth Circuit's Would Violate the Principles of Comity.

In the petition, Chase asserts that claims of ERISA preemption can *only* be brought in federal court and *only* if the plaintiff raising the claim is an ERISA beneficiary, participant, or fiduciary ("ERISA party"). According to Chase, a mere *claim* of ERISA preemption, whether valid or not, transforms *any* action into an action "under ERISA." Presumably, Chase's argument would apply not only to an action challenging a tax, but also to actions challenging a building code provision, a zoning ordinance, or an environmental law that arguably reduces the value of an ERISA plan's investment.

If accepted, Chase's argument would open the federal courts to a new class of cases concerning application of state laws and local ordinances, requiring federal judges to decide a myriad of local questions in derogation of the principle of comity. Moreover, two bodies of law

and policy could well develop on these local questions: one body created by the federal courts for entities that claim ERISA preemption and another body created by the local jurisdictions for all others. Such divergent results would be especially harmful in such areas as zoning and city planning that require uniformity of policy to be effective.

Implicit in the Ninth Circuit's decision is the recognition that when Congress enacted ERISA, it did not imagine the possibility of, much less intend, the consequences that follow from Chase's misinterpretation of ERISA section 502(e)(1).

## II. THE NINTH CIRCUIT CORRECTLY HELD THAT THE TAX INJUNCTION ACT BARRED FEDERAL JURISDICTION BECAUSE ONE MARKET PLAZA COULD RAISE THE ERISA PREEMPTION ISSUE IN THE CALIFORNIA COURT SYSTEM.

Chase also asks this Court to decide: "Can an entity which is not an ERISA beneficiary, participant, or fiduciary bring an action under ERISA in state court?"

Again, review by this Court is unnecessary as the Ninth Circuit correctly answered the question.

In *Alcan Aluminium, supra,* 493 U.S. at 339, this Court held that even if the plaintiff cannot challenge a tax in state court, the Tax Injunction Act bars federal jurisdiction as long as the plaintiff controls another entity that has a plain, speedy, and efficient remedy to challenge the tax in state court. The Ninth Circuit correctly held that because Chase controls One Market Plaza, *Alcan Aluminium* applies.

Chase argues that only an ERISA party can raise an ERISA preemption claim. Therefore, Chase concludes, One Market Plaza cannot raise the claim in the California courts. The Ninth Circuit correctly rejected the argument. The court reasoned that ERISA section 502(e)(1) "requires only that actions under ERISA by specific entities – such as fiduciaries – be brought in federal court. [Section 502(e)(1)] says nothing about actions by other entities such as the One Market Plaza venture." Petition at App. 9.

Chase argues that this Court has held that parties not specified in ERISA do not have standing to assert a cause of action under ERISA. Petition at 10. The two cases cited by Chase, *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1984) and *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27 (1983), do not support that principle.

*Massachusetts Mutual* concerned the question of whether ERISA authorized the award to a participant of extracontractual damages against a fiduciary. 473 U.S. at 136. This Court held that such damages were not specified in ERISA, and thus were unavailable to an ERISA participant. This Court also held that an ERISA participant could not bring an action outside ERISA for extracontractual damages. *Id.* at 145-148. The decision did not address whether non-ERISA parties had standing to raise issues that involve ERISA.

*Franchise Tax Board* involved a suit by a state taxing authority seeking (1) to enforce a tax levy against an ERISA trust and (2) a declaratory judgment on whether ERISA prevented the levy. 463 U.S. at 5-7. This Court held

that there was no federal jurisdiction for the action because only a suit by an ERISA party "arises under" ERISA section 502, and the taxing authority was not an ERISA party. *Id.* at 25-27. However, this Court did *not* hold that a non-ERISA party (the taxing authority) could not raise the claims at all. Instead, this Court remanded the action to the California courts to decide the ERISA issues. *Id.* at 28.

Indeed, this Court has decided a claim of ERISA preemption asserted in state court by a plaintiff that was not an ERISA party. *See Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988). Chase's argument has no merit.

## CONCLUSION

The Court should deny the petition.

Dated: January, 1998

Respectfully submitted,

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